

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

agreement was reached, and the Examiner remained of the opinion that the final rejections of claims are supported by the prior art, notwithstanding the attorney's protestations to the contrary.

Again, Applicant notes the allowability of dependent claims 28, 30, 33, 35, 36, 38-40 and 42 if these claims are rewritten in independent form; however, Applicant requests the Examiner to hold in **abeyance** the rewriting of these claims, until the Examiner has had an opportunity to reconsider (and to allow) the rejected claims 17-27, 29, 31, 32, 34, 37, 41 and 43-50.

Applicant strongly feels that the patentability of the present invention is not limited to the "look-up table" limitation recited in the "allowable" claims 28, 30, 33, 35, 36, 38-40 and 42, and Applicant respectfully requests Examiner Gelin **carefully** to reconsider Applicant's previous arguments and the following additional arguments directed to the patentability of the statutorily rejected claims.

The rejection under 35 U.S.C. § 102(b) requires that Tiedemann '840 describe, either expressly or inherently, each limitation of the rejected claims 17-21, 23-27, 29, 31, 32, 34, 37, 41 and 43-50, or in other words, that each of these rejected claims be readable on Tiedemann's disclosure.

Applicant respectfully again submits that clearly such is **not** the case here, as explained in Applicant's previous Request for Reconsideration and as further explained below.

Referring to Section 3 of the Final Office Action of April 28, 2004, Applicant again **respectfully disagrees** with the Examiner, and especially the Examiner's analysis that:

Tiedemann teaches...performing a step of changing the transmit power according to a corresponding change in the required transmission quality target value (i.e. transmitting at higher power or

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

lower power due to propagation path, col.3, lines 27-38 and col.4 lines 1-28),

at least for the following reasons.

Notwithstanding the Examiner's assertion to the contrary, "transmitting at higher power or lower power due to propagation path" does **not** mean "changing the transmit power according to a corresponding change in the required transmission quality target value", as recited in Applicant's rejected claims and as understood by a person of ordinary skill in the art to which the present invention is directed.

In particular, "due to propagation path" is a **reason** for changing the transmit power, while Applicant's claimed "according to a corresponding change in the required transmission quality target value" is a **way** of changing the transmit power.

It is the aim of any power control technique to transmit at higher or lower power, due to various **reasons**. However, there are different possible **ways** of **changing** the transmit power, and the present invention has for its object one particular way, which is **not disclosed or suggested** by Tiedemann, and which is a more efficient way of changing the transmit power, i.e., "upon the occurrence of a significant change in the required transmit power".

As explained in Applicant's specification, the present invention aims at avoiding the drawbacks of the prior art, in particular for the case of a change in transmission rate (page 2, fourth paragraph), i.e. :

However, in a system including a CLPC algorithm of the above-recalled type, it may take a relatively long time to reach the new required power each time there is a change in the transmission rate, for various reasons including in particular the time it takes for the outer loop to adjust the target SIR accordingly, or the fact that

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

the transmit power is adjusted in a stepwise manner by the inner loop.

It is known to avoid such drawbacks by changing the transmit power in an inverse proportion to the spreading factor (i.e., in proportion to the variation of the transmission rate), as explained at page 2 of Applicant's specification:

The CLPC algorithm may also be adapted, to make this time as short as possible. To this end, EP 0 886 389 teaches to change the transmit power in an inverse proportion to the variation of the spreading factor.

However, as recognized by the present invention, this known technique, in turn, has the drawback that it does not enable to set the new required power to an optimized value.

To avoid such a drawback, Applicant's claimed invention requires the step of "changing the transmit power according to a corresponding change in the required transmission quality target value".

This step is **not disclosed or suggested** by Tiedemann.

Let us now look more particularly at the passages of Tiedemann cited by the Examiner:

The desired **results** mentioned at col. 3, lines 27-38 of Tiedemann (i.e., "reducing the transmission power to the minimum necessary for high quality communications", or using the transmission power reduction of "one user [to allow] another user to transmit at a higher power") are results which are already achieved by the conventional power control techniques as explained, for example, at page 5, together with Figure 1, of the present application, and these are **not the results** aimed at by the present claimed invention, as explained above and in Applicant's specification.

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

In col. 4, lines 1-18, Tiedemann discloses how to decrease the transmit power after having increased it by an amount which is "more than adequate". It is stated that ramping down of the transmit power either can "immediately begin", or can be refrained.

However, a ramping down (be it immediate or delayed) of the transmit power, after having increased it by the amount which is "more than adequate", is **not the same thing** as "changing the transmit power according to a corresponding change in the required transmission quality target value" and "upon the occurrence of a significant change in the required transmit power", as claimed in claim 17 as understood by the person of ordinary skill in this art.

In particular, a "ramping down" of the transmit power (i.e., a decrease of the transmit power at an exponentially decreasing rate, as also explained at col. 3, line 61, of Tiedemann) produces a smooth change of the transmit power; however, if the power is changed according to Applicant's claimed "corresponding change in the required transmission quality target value", then the transmit power is (immediately) brought to the new required value.

Furthermore, the moment at which Tiedemann applies the "ramping down" does **not correspond** to Applicant's claimed "upon the occurrence of a significant change in the required transmit power".

Rather, it could be the preceding moment, at which Tiedemann increases the transmit power by an amount which is "more than adequate under most fading conditions" (as further described at col. 3, lines 55-62), that could correspond to the "upon the occurrence of a significant change in the required transmit power". However, even in this case, Tiedemann does **not** disclose or suggest that this change should be according to Applicant's claimed

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

"corresponding change in the required transmission quality target value". Tiedemann says **only** that it is a change that is "more than adequate under most fading conditions". However, Tiedemann does **not** disclose which particular value of change should be applied, and, **most important**, Tiedemann does **not** disclose the particular value proposed by Applicant's claimed invention, i.e. "according to a corresponding change in the required transmission quality target value".

Col. 4, lines 19-28, of Tiedemann discloses to set "the power control bits to request additional power from the base station to accommodate a change in velocity [of the mobile station]". However, such a change, obtained by setting the power control bits to request additional power from the base station to accommodate a change in velocity of the mobile station, also is **not the same thing** as Applicant's claimed "change in the required transmission quality target value", as also understood by the ordinarily skilled person.

In particular, "setting the power control bits" means working according to the known power control techniques as recalled, for example, at Applicant's specification page 5 together with Figure 1 and, as explained in the specification and recalled above, upon the occurrence of a significant change in the required transmit power, has known drawbacks which are avoided by the present claimed invention, i.e., by "changing the transmit power according to a corresponding change in the required transmission quality target value" (claim 17).

In summary, then, since Tiedemann does not disclose, either expressly or inherently, each limitation of claims 17-21, 23-27, 29, 31, 32, 34, 37, 41 and 43-50, or in other words, since none of these claims is readable on Tiedemann's disclosure (as explained in detail above), Applicant

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

respectfully submits that Tiedemann is **incapable** of "anticipating" any of these claims, whereby Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of 35 U.S.C. § 102(b). With respect to the rejection of claim 22 under 35 U.S.C. § 103(a), since Applicant has shown the error in the Examiner's statement that Tiedemann "teaches all of the limitations above except the transmission quality is represented by a signal to interference ratio", Applicant respectfully submits that it would not have been obvious to combine Faber's teaching with that of Tiedemann to render the subject matter of claim 22 *prima facie* obvious. In fact, even if one (for some unknown reason) were to combine the teachings of Tiedemann and Faber, it is clear that there would not be produced the subject matter of claim 22 or subject matter which would have rendered claim 22 obvious.

REQUEST FOR INTERVIEW

As explained above, Applicant respectfully submits that the invention as defined in the statutorily rejected claims is **entirely different** from Tiedemann, taken alone or in combination with Faber. In particular, the claims rejected under 35 U.S.C. § 102(b) clearly are **not readable** on Tiedemann's disclosure. Applicant also strongly feels that an appeal should **not be necessary** in this case. Thus, if for any reason the Examiner feels that the application is not now in condition for allowance, Applicant respectfully requests Examiner Gelin to **call the undersigned attorney** to discuss the matter. For example, even though, and as explained in great detail above, Applicant feels that the Tiedemann disclosure does not anticipate the claims (as presently written) which are rejected under 35 U.S.C. § 102(b), if the Examiner feels that the claims could be amended better to distinguish (in the Examiner's opinion) the claimed invention from

SECOND REQUEST FOR RECONSIDERATION
U.S. APPLN. NO. 10/036,356

Tiedemann's disclosure, Applicant would appreciate Examiner Gelin's giving the undersigned attorney the opportunity to discuss such matters.

Applicant files concurrently herewith a Petition (with fee) for an Extension of Time of Two Months, thereby extending to **September 28, 2004**, the shortened response time to the final action of April 28, 2004. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,



John H. Mion
Registration No. 18,879

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3213
(202) 663-7901

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: September 22, 2004